

van Lengerich - Serial No. 09/782,320
RESPONSE
Attorney Docket No. GMI-5238 (BVL-102A)

REMARKS

Claims 25-35, 37-43, 46-47, 50, 52-62, 64-71, 73, 75-76, 79, 81-101, 103, and 105-107 are pending.

I. ALLOWABLE SUBJECT MATTER

Applicant thanks Examiner Webman for indicating that Claims 52, 54-59, 61-62, 64-67, 69-70, 73, 75-76, 79, 81-85, 95-97, and 105 are allowed. Claim 103 depends from allowed Claim 52 and should also be allowed.

Applicant also thanks Examiner Webman for indicating that "the application" is allowed as to the elected species. However, Applicant requests clarification as to why Claims 25, 27-31, 34-35, 37-40, 42, 46, 90-93, and 101 were indicated as allowed in the Office Action dated March 18, 2004, but are not indicated as allowed in the present Quayle Action. In particular, Applicant requests that the Examiner state on the record that the pending and non-withdrawn Claims 25, 27-31, 34-35, 37-40, 42, 46, 91-93, and 101 are allowable as to the elected species. Applicant notes that Claim 90 is directed to omega-3 fatty acids. Claim 90 was indicated as allowed on the front page of the March 18, 2004 Office Action, but was also rejected in the Office Action.

According to the Applicant, the elected species are as follows: (1) durum wheat as a plasticizable matrix material and (2) a probiotic (e.g. a microorganism that has a beneficial effect on animal and human health) nutraceutical component as an encapsulant. Applicant notes that the election of species requirement directed to the rate-controlling agent (hydrophobic component) was withdrawn in the Office Action dated March 17, 2003. As to the additional matrix material, Applicant elected starch as the additional matrix material in Claim 79. As to the encapsulant form recited in Claims 93-94, Applicant elected the liquid encapsulant of Claim 93.

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II. WITHDRAWN CLAIMS

Applicant respectfully notes that withdrawn Claims 32-33 and 60 were previously examined and should not be withdrawn due to any restriction or elections of species requirement. As noted above, the election of species requirement directed to the rate-controlling agent (hydrophobic component) was withdrawn in the Office Action dated March 17, 2003. Withdrawn Claim 76 was examined and thus Claim 47, which recites the same subject matter but depends from Claim 25, should not be withdrawn. Applicant respectfully asserts that withdrawn Claims 26, 41, 53, 68, and 86-89 are generic to and readable on the elected species and should not be withdrawn.

III. REQUEST TO REOPEN PROSECUTION

Applicant requests that prosecution be reopened so that search and examination may continue as to the non-elected species of encapsulants. If an election of species is required by the Applicant, the Applicant hereby elects enzymes.

IV SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENTS

Applicant respectfully requests Examiner Webman to sign and return the Forms PTO-1449 submitted with the Supplemental Information Disclosure Statement filed via certificate of mailing on March 26, 2001; the Second Supplemental Information Disclosure Statement filed via certificate of mailing on December 21, 2001; and the Third Supplemental Information Disclosure Statement filed via certificate of mailing on March 8, 2002.

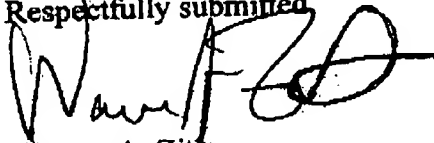
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V. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

Any shortages in fees should be charged to, or any overpayment in fees should be credited to, Deposit Account No. 501032 (Docket No. BVL-102A).

Respectfully submitted,



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